

the Program Participant that it may avail itself of an opportunity for an appeal by filing a petition in accordance with the provisions of § 124.210 and part 134 of this title.

(5) *Appeal to Office of Hearings and Appeals.* Procedures governing appeals of program graduation to the Office of Hearings and Appeals are set forth in § 124.210 and part 134.

(d) *Post-graduation.* After the effective date of a program graduation as provided for herein, an 8(a) concern is no longer eligible to receive any 8(a) program assistance. However, such concern is obligated to complete previously awarded 8(a) subcontracts, including any priced options which may be exercised.

[54 FR 34712, Aug. 21, 1989, as amended at 60 FR 29975, June 7, 1995]

§ 124.209 Program termination.

(a) *General.* Participation of a 8(a) business concern in the 8(a) program may be terminated by SBA prior to the expiration of the concern's Program Term for good cause. Examples of good cause include, but are not limited to, the following:

(1) Failure by the concern to continue to maintain its eligibility for program participation.

(2) Failure by the concern to maintain its status as a small business under the Small Business Act, as amended, and the regulations promulgated thereunder. *See* § 124.102.

(3) Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by the person(s) who has (have) been determined to be socially and economically disadvantaged pursuant to these regulations.

(4) Failure by the concern to obtain written approval from SBA for any changes in ownership, management or control pursuant to §§ 124.103 and 124.104.

(5) Failure by the concern to disclose to SBA the extent to which nondisadvantaged persons or firms participate in the management of the section 8(a) business concern.

(6) A demonstrated pattern of failing to make required submissions or re-

sponses to the Administration in a timely manner, including:

(i) Failure by the concern to provide required financial statements to SBA pursuant to §§ 124.312(b)(4), 124.312(c)(7), and 124.501(c). Failure to provide SBA with requested tax returns, reports, or other available data within 30 days of the date of request.

(ii) Failure by the concern to submit an updated business plan within 30 days of receipt of request, without an extension of time which has been approved by SBA.

(iii) Failure by the concern to provide documents or certifications of continued eligibility or otherwise respond to requests for information relating to the section 8(a) program from SBA or other authorized government officials within the time frames provided for in the requests.

(7) Cessation of business operations by the concern.

(8) Failure by the concern to achieve the goals cited in its original or modified business plan as a result of repeated refusals to accept or utilize SBA assistance.

(9) Failure by the concern to pursue competitive and commercial business in accordance with the business plan, or failure to make reasonable efforts to achieve competitive status.

(10) Failure by the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 8(a).

(11) A pattern of inadequate performance of awarded section 8(a) procurement subcontracts by the concern.

(12) Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.

(13) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters.

(14) Diversion of funds or other assets from the section 8(a) business concern or excessive withdrawals from such concern for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners

which is detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan.

(15) Unauthorized use of business development expense funds and/or advance payment funds and/or SBA direct, guaranty or immediate participation loan proceeds; or violation of an advance payment, business development expense agreement, or loan agreement.

(16) Failure by the concern to obtain prior SBA approval of any management agreement, joint venture agreement or other agreement relative to the performance of a section 8(a) subcontract. Violation of any requirement of a management, joint venture, or other agreement approved by SBA by either the section 8(a) concern or one of the joint venturers.

(17) Failure by the concern to obtain approval from SBA before subcontracting under a section 8(a) subcontract, or failure by the concern to abide by any conditions imposed by SBA upon such approval.

(18) Violation by the concern of a section 8(a) subcontract provision which prohibits contingent fees and gratuities; or failure to disclose to SBA fees paid or to be paid, or costs incurred or committed to third parties, directly or indirectly, in the process of obtaining section 8(a) contracts or subcontracts, or violation of § 124.7.

(19) Knowing submission of false information to SBA, including false certification of compliance with non-8(a) business activity targets under § 124.312(c)(11), on behalf of a section 8(a) business concern by its principals, officers, or agents, or by its employees, where the principal(s) of the section 8(a) concern knows or should have known such submission to be false.

(20) Debarment, suspension, voluntary exclusion, or ineligibility of the concern or its principals pursuant to 13 CFR part 145, FAR subpart 9.4, 48 CFR Ch.1, and 48 CFR Ch. 22, or any successor regulation.

(21) Conviction of the concern, the individual(s) upon whom 8(a) program eligibility is based, or the director, officer or manager of tribally-owned concern, including one owned by an Alaska Native Corporation, or concern owned

by a Hawaiian organization is based for any offense indicating a lack of business integrity including, but not limited to:

(i) Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;

(ii) Violation of the Organized Crime Control Act of 1970 (Pub. L. 91-452; 84 Stat. 922);

(iii) Embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a government contractor;

(iv) Violation of any Federal anti-trust statute;

(v) Commission of any felony not specifically listed above; or

(vi) Violation of section 16 of the Small Business Act, (15 U.S.C. 645).

(22) Conviction of a nondisadvantaged owner, officer, or director of the concern for any offense described in paragraph (a)(21) of this section, provided that one or more disadvantaged owners or officers of the concern abetted, conspired with or otherwise acquiesced in the owner's or officer's commission of the offense.

(23) Willful failure on behalf of an 8(a) business concern to comply with applicable labor standards and obligations.

(24) Violation of any terms and conditions of the 8(a) Program Participation Agreement.

(25) Willful violation by an 8(a) business concern, or any of its principals, of any rule or regulation of the Administration pertaining to material issues.

(b) *Termination procedures.* (1) *Letter of notification.* When SBA determines that grounds exist to terminate a concern's participation in the 8(a) program pursuant to this section, SBA shall notify the Participant in writing of its intent to terminate in a letter of notification. The letter of notification shall set forth findings, based on the facts and in accordance with law and regulations, for every material issue relating

to the grounds upon which such termination would be based with specific reasons for each finding. The letter of notification shall provide the Participant 45 days from the date of service of the letter to submit in writing information which would eliminate the ground(s) for termination or would explain why the proposed ground(s) should not justify termination.

(2) *Recommendation of the Division.* Following the 45-day response period, the Division Director will have 15 days to consider the facts of the proposed termination, including all information submitted by the Participant. The Division Director may, if he/she deems it necessary, request additional information from the Participant. If the grounds for the proposed termination continue to exist, the Division Director shall recommend in writing to the AA/MSB&COD that the Participant be terminated.

(3) *Decision of the AA/MSB&COD.* Upon the recommendation of the Division Director, the AA/MSB&COD will consider the proposed termination and the written record supporting it. If the AA/MSB&COD determines that a termination is warranted, he/she will issue a Notice of Termination to the Participant. If not, he/she will so notify the Participant. Unless appealed to OHA, the decision of the AA/MSB&COD to terminate a Program Participant shall be effective 45 days after its issuance.

(4) *Notice requirements.* A Notice of Termination shall conform to the form, filing and service requirements of part 134 of this Title, under which the appeal proceeding shall be conducted. The Notice of Termination shall set forth findings, based on the facts and in accordance with law and regulations, for every material issue relating to the grounds upon which the termination is based. The Notice of Termination shall also advise the Program Participant that it may avail itself of an opportunity for an appeal by filing a petition in accordance with the provisions of § 124.210 and part 134 of this title.

(5) *Appeal to Office of Hearings and Appeals.* Procedures governing appeals of program termination to the Office of

Hearings and Appeals are set forth in § 124.210 and part 134 of this title.

(c) *Post-termination.* After the effective date of a program termination, an 8(a) business concern is no longer eligible to receive any section 8(a) program assistance. However, such concern is obligated to complete previously awarded 8(a) subcontracts, including any priced options which may be exercised. (See § 124.211 for Program Suspension).

[54 FR 34712, Aug. 21, 1989, as amended at 55 FR 34903, Aug. 27, 1990; 60 FR 29975, June 7, 1995]

§ 124.210 Appeals to SBA's Office of Hearings and Appeals.

(a) Except as provided in paragraph (d) of this section, an applicant concern or Program Participant shall be afforded the opportunity to appeal any of the following Agency determinations:

(1) Denial of program admission based solely on a negative finding(s) of social disadvantage, economic disadvantage, ownership or control pursuant to § 124.206;

(2) Graduation pursuant to § 124.208;

(3) Termination pursuant to § 124.209; or,

(4) Denial of a request to issue a waiver pursuant to § 124.317.

(b) The applicant or Participant concern may initiate such appeal by filing a petition in accordance with part 134 of this title with SBA's Office of Hearings and Appeals (OHA) within 45 days of the date of service of the final Agency determination pursuant to paragraph (a) of this section. In addition to the requirements of § 134.203(a), the petition shall state, with specific reference to the determination and the record supporting such determination, the reasons why the determination is alleged to be arbitrary, capricious or contrary to law. Concurrent with its filing with OHA, the concern shall also serve the AA/MSB&COD and SBA's Office of General Counsel with a copy of the petition, including attachments. In the context of appeals relating to denials of program admission pursuant to § 124.206 or denials of requests for waivers pursuant to § 124.317, service on the Office of General Counsel shall be made by personal delivery or certified mail,